

1
2 IN THE UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF TEXAS
4 BROWNSVILLE DIVISION

5
6 UNITED STATES OF AMERICA) CRIMINAL ACTION NOS.
7 VS.) B-09-1005 AND
8 GERONIMO SALVADOR SANTOS-NUEZ) B-10-52
9)
10) 1:38 P.M. TO 1:39 P.M.
11) 2:24 P.M. TO 2:32 P.M.
12) 4:10 P.M. TO 4:27 P.M.

13 SENTENCING AND REVOCATION OF SUPERVISED RELEASE
14 BEFORE THE HONORABLE HILDA G. TAGLE
15 JANUARY 27, 2010

16 APPEARANCES:

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37 **AND ONE COPY AT THE OFFICIAL RATE. General Order 94-15,**
38 **United States District Court, Southern District of Texas.**

1 *(The Court heard other matters.)*

2 THE COURT: Okay. 09-CR-1005 and 10-CR-52, the
3 *United States of America versus Geronimo Salvador Santos-Nuez.*

4 What says the government?

5 MR. CASTRO: Angel Castro for the government,
6 Your Honor. Ready.

7 THE COURT: What says the defendant?

8 MR. RODRIGUEZ: Rudy Rodriguez. We're ready. No
9 objections. We do have a downward departure, and that will be a
10 plea of true, Your Honor.

11 *(The Court heard other matters.)*

12 THE COURT: Geronimo Salvador Santos-Nuez, 09-CR-1005
13 and 10-CR-52.

14 MR. CASTRO: Angel Castro for the government,
15 Your Honor.

16 MR. RODRIGUEZ: Rudy Rodriguez for Mr. Santos,
17 Your Honor.

18 THE COURT: Good afternoon, sir.

19 Mr. Rodriguez, does your client prefer to sit?

20 MR. RODRIGUEZ: Yes, Your Honor.

21 THE COURT: All right.

22 First of all, is there an objection to the report and
23 recommendation of the magistrate judge by the government?

24 MR. CASTRO: No objection, Your Honor.

25 THE COURT: By the defendant?

1 MR. RODRIGUEZ: None, Your Honor.

2 THE COURT: Then that report is approved and is
3 adopted by the Court, and the defendant's plea of guilty is
4 accepted. And based upon the evidence in the record at
5 re-arraignment and the defendant's plea of guilty, the Court
6 finds that the defendant, Geronimo Salvador Santos-Nuez, is
7 guilty of the crime of being an alien unlawfully present in the
8 United States after having been convicted of a felony and
9 deported as alleged in this indictment.

10 The Court, having found the defendant guilty, will
11 proceed with sentencing.

12 Mr. Rodriguez, have you reviewed the presentence
13 report in cause number 09-CR-1005 with your client?

14 MR. RODRIGUEZ: I have, Your Honor.

15 THE COURT: Are there any objections?

16 MR. RODRIGUEZ: There are no objections, Your Honor.

17 THE COURT: Then I now call our cause number 10-CR-52,
18 which was originally 05-CR-1232, a case out of the Southern
19 District of New York.

20 Sir, are you the Geronimo Salvador Santos-Nuez who in
21 that cause number out of the Southern District of New York was
22 found guilty of illegal reentry of a deported alien and
23 thereafter sentenced to a term of imprisonment of 20 months
24 followed by a three-year term of supervised release?

25 THE DEFENDANT: Yes.

1 THE COURT: At the time that you began your
2 supervision on April 27th, 2007, did you understand that there
3 were certain standard, mandatory, and special conditions of
4 supervised release that you had to comply with?

5 THE DEFENDANT: Yes.

6 THE COURT: Did you understand that that included that
7 you were not to commit a crime, state, federal, or local?

8 THE DEFENDANT: Yes.

9 THE COURT: Have you received a copy of the petition
10 in that case that alleges that you violated that condition in
11 that you committed the offense of being an alien unlawfully
12 entering or present in the United States after having been
13 denied admission, excluded, deported, or removed, and that you
14 had not obtained consent of the Attorney General or the
15 Secretary of Homeland Security -- of the Department of Homeland
16 Security to reapply for admission into the United States and
17 that that occurred on or about July 25th, 2009, in Cameron
18 County, Texas?

19 THE DEFENDANT: Yes. Yes, Your Honor.

20 THE COURT: How do you plead to that allegation, true
21 or not true?

22 THE DEFENDANT: Guilty.

23 THE COURT: Is it --

24 THE DEFENDANT: True. True.

25 THE COURT: All right. Then based upon your plea of

1 true, the Court finds that you have violated your term of
2 supervised release as alleged in this petition. The Court,
3 having so found, will proceed to hear from the government on
4 both the new indictment, 09-CR-1005, and the petition for
5 revocation filed under our cause number 10 -- excuse me --
6 10-CR-52.

7 Mr. Castro, for the government?

8 MR. CASTRO: Your Honor, the government would offer
9 Exhibit No. 1, which is a three-page document reflecting the
10 conviction for the conspiracy -- conspiracy to distribute
11 cocaine used for the 16-level enhancement.

12 MR. RODRIGUEZ: No objection, Your Honor.

13 THE COURT: Admitted.

14 MR. CASTRO: Your Honor, we would also move for the
15 third acceptance point.

16 THE COURT: Motion's granted.

17 MR. CASTRO: This would result in an offense level 21,
18 with a criminal history category of five, a sentencing range of
19 70 to 87 months. In light of the fact that he does have a
20 prior -- or that he does have a revocation, and considering the
21 pleadings that he has filed through his attorney, we would
22 suggest that the sentence -- the low end of the 70 months would
23 be a reasonable sentence in this case given the fact that he
24 does have two prior drug convictions along with a prior illegal
25 reentry conviction in which it appears that he was apparently

1 given consideration for the same type of relief that he's
2 seeking here today.

3 By my calculations paragraph 25, that conviction
4 should have resulted in a guideline range of 57 to -- to 71
5 months considering a level 21 with a criminal history category
6 of four, and he was only sentenced to 20 months. Obviously that
7 consideration didn't keep him from coming back, and he will
8 obviously continue coming back to the United States.

9 I understand he says that he fears for his life in --
10 in his country; however, this -- this instance he was coming in
11 through Mexico, so certainly didn't fear his life in Mexico. He
12 consciously decided to come into this country knowing that he
13 had those convictions and that maybe he could take advantage of
14 this -- him having cooperated before because he was a -- a drug
15 trafficker. So we would suggest that the 70 months is
16 reasonable.

17 We would ask the Court to consider on the revocation,
18 based on his plea of true, a 12-month sentence and to run that
19 consecutive.

20 THE COURT: Mr. Rodriguez, on behalf of your client?

21 MR. RODRIGUEZ: Your Honor, we do have a motion for
22 downward departure, if I may address that, Your Honor.

23 THE COURT: Go ahead.

24 MR. RODRIGUEZ: Your Honor, at this time we'd offer
25 Defendant's Exhibit No. 1, which is a letter from my client's

1 wife, Defendant's Exhibit No. 2, which is an affidavit signed by
2 a police detective in New York City, and our Exhibit No. 3,
3 Your Honor, is three letters from his mom, his sister, and
4 brother.

5 We also have attached to Exhibit 3, Your Honor, an
6 arrest report from 2008, September, from the Dominican Republic,
7 and also the medical records as a result of an attempt on his
8 life, Your Honor, if I may offer these at this time.

9 MR. CASTRO: No objection, Your Honor.

10 THE COURT: Admitted.

11 Well, you're going to have to give me a chance to read
12 all of this.

13 MR. RODRIGUEZ: Yes, Your Honor.

14 THE COURT: And, actually, I'd like to do so before I
15 rule on any motions, so I think I'm going to have to recess so
16 that -- I mean, it's a little bit lengthier than what Mr. Wilde
17 previously offered in one of his -- one of his sentencing. So
18 let me recess, and I'll take you up after I conclude everybody
19 else's sentencing.

20 MR. RODRIGUEZ: Thank you, Your Honor.

21 MR. CASTRO: Thank you, Your Honor.

22 MR. RODRIGUEZ: May I be excused temporarily,
23 Your Honor?

24 THE COURT: Yes.

25 *(The Court heard other matters.)*

1 THE COURT: Thank you. Please be seated.

2 All right. The Court having reviewed the exhibits,
3 I'll prepare to hear from -- let's see. Well, it was -- there's
4 not a plea agreement in connection with the new indictment, and
5 so first, if I haven't -- I'm sorry. It's a while ago since I
6 called this case originally, but if I've not heard from the
7 government on cause number -- in cause number 09-CR-1005 and in
8 connection with the petition for revocation, the sanction in
9 that case, 10-CR-52, I'll hear from the government again,
10 please.

11 MR. CASTRO: Yes, Your Honor. There is no -- there is
12 no agreement, and once again we would -- we would argue that --
13 and we have already moved for the third acceptance point, so the
14 guideline range -- he scores at level 21 and a criminal history
15 category of five, 70 to 87 months.

16 We had asked the Court to consider the 70 months in
17 light of the fact that he does have two prior drug convictions
18 along with a prior illegal entry conviction where the guideline
19 range, based on -- on the prior conviction would have been 57 to
20 60 -- 57 to 71 months, and the judgment reflects that he only
21 received 20 months.

22 We would ask the Court to consider the 70 months as a
23 reasonable sentence in light of those factors and in light of
24 the fact that -- with regards to the revocation, we'd ask the
25 Court to consider the 12 months and to run it consecutive.

1 THE COURT: Mr. Rodriguez, I'll hear from you now on
2 your motion for downward departure now that I've read your
3 exhibits, and I'm going to allow the government to respond.

4 MR. RODRIGUEZ: Your Honor, we're asking for the Court
5 to consider a downward departure in this case. My client,
6 Mr. Santos, is 34 years old. He's a citizen of the Dominican
7 Republic.

8 Our basis of the departure, Your Honor, is that he had
9 no other alternative, Your Honor, but to return to this country.
10 We don't dispute that he has the two drug convictions,
11 Your Honor, but what we do wish to show the Court is that his
12 life has been under constant threat since he was deported in
13 2005.

14 Your Honor, he was there not even a month when two
15 gentlemen came looking for -- three gentlemen, actually, came to
16 his mother's house looking for him. He ran. He stayed in
17 another city there in the Dominic for a few months, and then he
18 tried to reenter the United States.

19 After serving his time for that reentry, he was again
20 deported, and within three months after being back, a trap was
21 set by Mr. Gutierrez's underlings. They ran into -- rammed into
22 his car. He was injured pretty severely, a broken leg which is
23 still not healed correctly, Your Honor.

24 Your Honor, if we look at this -- and I presented the
25 police report, Your Honor. It's pretty clear that these two men

1 that were arrested in the car that rammed his car had guns, and
2 apparently there was an indication that they were working for a
3 drug lord, Sergio Gutierrez.

4 Your Honor, my client, during those two drug
5 convictions, did cooperate. He did help arrest Sergio
6 Gutierrez, and recently -- I spoke with Officer Rivera from New
7 York City, Your Honor. He confirmed -- and Ms. Melissa Montes
8 from probation talked to him also. Just this -- I think he said
9 within the last two months he arrested the two sons of Sergio
10 Gutierrez for murder there in New York.

11 So this is a very serious occurrence that's going on,
12 Your Honor. This is a man who's running for his life. He
13 actually went to Columbia at one point but was sent back to the
14 Dominican Republic, Your Honor, and that's when he made this
15 reentry.

16 This is a man who I believe truly fears for his life,
17 and he tried to stay legally, Your Honor. He filed that asylum
18 application in 2007, and the reason it was denied, Your Honor,
19 was because there was no link between the drug lord and the
20 government. What the judge did say in that report, though, was
21 that he found credible fear. He found that this man does have
22 fear and that he is in danger, but due to the fact that he could
23 not relate the endangerment to a government official, his asylum
24 application was denied.

25 Your Honor, we're asking this Court to depart downward

1 to 20 months. When Mr. Castro said that he was given a break or
2 somehow helped at the last reentry, I don't know that,
3 Your Honor. All I know is that maybe it was a liberal judge in
4 New York. Maybe some judges don't consider illegal reentries
5 that serious in other parts of the country. I know here we
6 do -- or maybe the judge used the 3553(a) factors, Your Honor.

7 I don't know why he got 20 months on that, but to
8 imply that he should be punished here more severely or get
9 punished and no break here simply because he got less time over
10 there I don't think is a good argument.

11 Your Honor, what I'm asking this Court for -- and I
12 think I've hopefully provided the Court with sufficient proof
13 that this is not a made-up story. This is a man that's hurt,
14 and, Your Honor, he was so desperate he crossed this river with
15 this injured leg. He came into this country like this. This is
16 a man who's in fear, Your Honor.

17 I'm asking the Court for consideration. I'm asking
18 the Court for a sentence of 20 months on the basis of no other
19 alternative. He did go to Columbia. He tried to stay. They
20 kicked him out of there, and on that basis I'd ask the Court for
21 a sentence of 20 months.

22 THE COURT: Well, the concern I have is that, you
23 know, no matter how credible his fear is and the basis for it,
24 you know, his sister, in her statement to the immigration court,
25 said that she had even seen people in her neighborhood -- she

1 lives here in the United States -- who she believes are looking
2 for him. His mother says that, you know, people regularly
3 threaten him in -- in the Dominican Republic.

4 So, I mean -- I don't know. It sounds like you're
5 asking that I give him a reduced sentence so he can go back home
6 to where he's being threatened. I mean, have you kind of been
7 able to consider the two things and what you're really asking me
8 to do or -- because I'm concerned that ultimately if I do, you
9 know -- if I were to sentence him to what you requested, then
10 that means that's just going to give him a time, you know, to
11 come back to the United States or that he would be coming back
12 to the United States, or I'm not sure exactly what his plan
13 would be.

14 So I mean, you know, he's in danger in New York. He's
15 in danger in -- in his country. So what is it -- what is the
16 plan if he got deported from Columbia as well?

17 MR. RODRIGUEZ: Well, I haven't discussed with
18 Mr. Santos the possibility of trying to apply to Canada. If
19 he's in jail for two years, the 20 months, Your Honor, that may
20 give him sufficient time to try to get into Canada in order to
21 avoid going back home or some other country.

22 I mean, the Gutierrezes are in the Dominican Republic,
23 there's no doubt, and they're also in New York. And so my guess
24 and my hope is that during his incarceration he'll be able to
25 apply to Canada and try to get citizenship there or at least

1 some residency in order to avoid going back to the Dominican
2 where I think he will be injured again.

3 THE COURT: Well, sir, is there anything you would
4 like to say before you're sentenced?

5 THE DEFENDANT: Yes, Your Honor. The first thing I'd
6 like to say to Your Honor: When I finish the time that you're
7 going to give me, I'm going to return or try to get a house --
8 Immigration so I can either get political asylum or another
9 country might help me out. I went -- because I did go to
10 Columbia to live, but when I got to Columbia, right before in my
11 presence they killed a person, and when they -- when the family
12 came or something, said "Forgive me," or -- "Oh, we can -- we
13 confused you with someone else," and so I felt like I was
14 threatened over there and that -- that town where I was living.

15 I don't have anybody to live with over there. I
16 couldn't walk. What I did decide was to return again to my
17 country, and then when I arrived over there I -- the threats
18 began again.

19 I don't have any money to protect myself. My wife
20 went over to visit me there, and when my wife is there at the
21 house, a young man came -- young boy there, 14 years old,
22 arrived there and tells my wife and says, "Geronimo is being
23 looked for. Four people are looking for Geronimo." And I said
24 to say, well, that he moved from here, that he -- that he lives
25 in another city, and that's when I made the decision to return

1 here.

2 Now I can walk, but to -- six months ago I was -- I
3 had crutches, and I couldn't do anything. I knew that when I
4 came in illegally what was going to happen to me, but -- and
5 it's not easy to see that one's death can be caused by somebody
6 who's following you, pursuing you. I decided to return here,
7 and I was -- I said, well, if they catch me, I'm going to reopen
8 my case. That's the only thing I can do, not that I wanted to
9 return.

10 I know everything that can happen to me here. I was
11 doing well with my life in my country, working, and then I got
12 in my mind that I can't live here and I returned to my country.
13 I was in Immigration. I was almost a year in Immigration
14 fighting this, and what my attorney says and my -- the judge was
15 asking for some sort of proof like if I was cooperating or
16 working for the government. How can I get it? I can't.

17 He told me to get a newspaper that -- where it might
18 be published in the newspaper, but I told the judge I couldn't
19 get that -- or the Immigration judge. I talked to my wife, "I'm
20 going to return to my country. We're going to make our lives
21 over there and look for work." I was working, but the
22 Gutierrez -- Sergio Gutierrez won't let me live in peace, and
23 when -- when I came back here, I had an accident over at
24 Karnes -- Karnes.

25 I broke -- I have a pinched nerve here (indicating),

1 and I broke something here (indicating). When I went to the
2 doctor, the lieutenant in charge of the jail tells me -- he
3 says, "Because you were so stupid, I'm going to put new charges
4 against you." I knew all of that might happen to me if I were
5 to return here.

6 Now in the jail where I am now in Falfurrias -- and
7 they have the report there that I broke -- have a broken hand.
8 The only thing I can tell you, Your Honor, is that I'm not
9 asking for time served or anything, to give me the least
10 possible time you can so that I can go to Immigration. I know
11 that I'm going to be like a year-and-a-half fighting my case in
12 Immigration so that my case can be opened again. That's the
13 only thing that I can ask you, and if you could have some
14 consideration to help me.

15 THE COURT: Well, unfortunately, Mr. Santos, you set
16 into motion the events that led up to your being the target of
17 that -- that, you know -- that family that now -- from what
18 you've told me and what has been testified to apparently now is
19 a consistent and persistent efforts to hurt you in some way.

20 Pursuant to the Sentencing Reform Act of 1984, you are
21 hereby sentenced to a term of imprisonment of 70 months in
22 connection with cause number 09-CR-1005.

23 The Court hereby -- having found that you have
24 violated your terms of supervised release hereby sentences you
25 to a term of imprisonment of imprisonment of 12 months. Said

1 sentence is ordered to run consecutively to the sentence in
2 09-CR-1005.

3 Upon release from imprisonment I'm ordering that you
4 serve another term of supervised release of three years. Sir,
5 do you understand that if you violate the law in any way during
6 the period of supervised release or illegally return to this
7 country, that either one of those or both could be a basis for
8 being revoked and being sent to prison such as I've ordered
9 today?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And if you are revoked because you've
12 committed a crime and you're also charged with that crime in a
13 new case, you could be again ordered to serve consecutive
14 sentences. Do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And, additionally, after the period of
17 supervised release has ended, the fact that you have this
18 conviction as well as any other convictions that can be
19 documented can be used by a judge in the future in deciding your
20 punishment. Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: The Court finds that you are indigent and
23 unable to pay a fine and, therefore, waives the imposition of a
24 fine. However, the Court does impose a special assessment of
25 \$100, which the Court will order remitted should the government

1 move to do so based upon your indigency.

2 MR. CASTRO: Government moves to remit, Your Honor.

3 THE COURT: Motion's granted.

4 Sir, this sentence is in conformance with the
5 Sentencing Reform Act of 1984. As justification for the
6 sentence, the Court adopts the findings in the presentence
7 report. The Court also relies on the evidence admitted during
8 this hearing in the form of Defendant's -- the defendant's
9 exhibits, and I believe that there were -- there was an
10 Exhibit 1 by the government as well.

11 The law does provide that you have a right to appeal
12 the Court's decision, and you can do so even though you're
13 indigent, but you must give notice of that intention within ten
14 days.

15 MR. RODRIGUEZ: Your Honor, may we have a
16 recommendation that he do his time in New York and possibly a
17 hospital?

18 THE COURT: I'll certainly make a recommendation that
19 he be evaluated for medical treatment, and if his desire is to
20 be -- for the recommendation to be for a facility in New York, I
21 understood that that was where he wanted to avoid being.

22 MR. RODRIGUEZ: Well, he'll be in federal custody.
23 The Gutierrezes are in state custody, Your Honor. I don't think
24 they'll cross paths there.

25 THE COURT: All right. Then I'll make the

1 recommendation to the Bureau of Prisons.

2 MR. RODRIGUEZ: Thank you, Your Honor.

3 THE COURT: Oh, I'm sorry. You must give notice of
4 the intention to appeal within 14 days. Thank you.

5 * * *

6 *(End of requested transcript.)*

7 -oOo-

8 I certify that the foregoing is a correct transcript
9 from the record of proceedings in the above matter.

10 Date: March 12, 2010

11 /s/ Heather Hall

12 Signature of Court Reporter